

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 21,122
)	
Appeal of)	

INTRODUCTION

The petitioner appeals the decision of the Office of Vermont Health Access (OVHA) denying him coverage under Medicaid for eyeglasses. The issue is whether eyeglasses are a covered service. The pertinent facts are not in dispute.

FINDINGS OF FACT

1. The petitioner is diabetic and has been diagnosed with "beginning cataracts in both eyes (nuclear sclerosis)" and "lid droop in both eyes". His doctor has prescribed new glasses for him based on a ".50 diopter difference from his old glasses Rx. to the new Rx.". Among other limitations, the petitioner alleges that he cannot drive a car without new glasses.

2. The Department denied this request pursuant to its current policy (see *infra*) of not providing any eyeglasses or vision correction services to individuals over age twenty-one.

RECOMMENDATION

The Department's decision is affirmed.

REASONS

Current Medicaid regulations preclude coverage for individuals over age 21 for any eyeglasses, contact lenses, or other vision correction services. W.A.M. §§ M670.3 and P-4005B(3)(e). There is no dispute in this matter that according to his doctor the prescribed glasses are medically necessary to improve the petitioner's vision. The petitioner argues that it is a violation of the Americans with Disabilities Act for the Department to impose a blanket prohibition of Medicaid coverage for prescribed eyeglasses.

The Department's policy is based on the federal Medicaid statute that gives states the option to provide certain medical assistance and services. 42 U.S.C. § 1396a(a)(10). "Eyeglasses" are specifically designated as a service that is optional for states to provide. *Id.* at 1396d(a)(12). The Board has specifically upheld the validity of this blanket exclusion as being consistent with federal and state statutes. Fair Hearing No. 17,888; see also *Brisson v. Dept. of Social Welfare*, 167 Vt. 148 (1997). Therefore, petitioner's ADA argument is actually with federal, not

state, policy, which is beyond the Board's scope of authority to consider. 3 V.S.A. § 3091(d); see also *Stevens v. Dept. of Social Welfare*, 159 Vt. 408 (1992).

There is no provision or exception in the regulations for any vision correction service based solely on the severity of an individual's vision problems. However, the Department concedes that if the petitioner can show that such lenses are necessary to avoid unique and detrimental health consequences for the petitioner it would consider an exception under M108 of the regulations.¹ At this time, however, the Department's decision must be affirmed.

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¹ The petitioner has informed the Department and the hearing officer that he is willing to have his doctor file a request for coverage under M108. The Department has also provided the petitioner with referrals to charitable organizations that provide free eyeglasses to needy individuals. It does not appear that the petitioner has availed himself of these potential sources of services.